IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.638 OF 2006

Anwar Khajorwala & Ors.....Petitioners

Vs.

State of Maharashtra & Ors..Respondents

Mr. Sailesh Shah with Mr. Prakash Ganwani and Mr. Munir Merchant for the Petitioners
Mr. R.M. Sawant, Govt. Pleader, for Respondent No.1.
Mr. K.K. Singhvi, Senior Counsel with Ms. Trupti Puranik, for Respondent No.2.
Mr. Boni Patel i/b. Budha & Associates for Respondent No.3.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA, JJ.
DATE : 27th April,2006

P.C.:

. The petitioners are residents in a building which was constructed by Respondent NO.3. Respondent No.2 has issued orders of demolition to demolish mezzanine floor and the 4th floor in Raza Castle, 125/127, Nishanpada Road, Mumbai-400 003. They have challenged those orders by the present petition alleging amongst others that they did not have the opportunity of showing cause to the notice issued under the provisions of the M.R.T.P. Act.

2. On behalf of the Respondents, reply has been filed denying the various allegations and also pointing out that the various proceedings initiated by respondent NO.3 have been dismissed. Our attention is also invited to the judgment of the learned Judge of this Court in Writ Petition No.2445 of 2005 dated 19th January, 2006 whereby the learned

Judge held that no protection or relief can be granted in favour of those petitioners. Various other directions have been issued. Learned Counsel appearing for the Corporation points out that considering all these directions they were bound to comply with the orders of this Court.

3. The petitioners herein were not parties to the proceedings. That, however, does not give them a higher right than what right was claimed by the respondent NO.3. The petitioners, it appears, were bonafide purchasers. The Counsel for the petitioners submitted before this Court that there is an adjoining property bearing 117/119 of ownership of one M/s.H.A.H. Bachooally Tin Factory. They submitted that they are proposing to purchase the property. It is pointed out that if the property is purchased there will be a balance FSI of 8000 sq. ft. Both the properties can be amalgamated and if that is done the present construction can be regularised. It is also pointed out that the respondent No.3 who is the owner of the property on which the building in respect of which notice is given, will purchase the adjoining property and on purchase will apply to the respondent No.2 for necessary reliefs.

4. Considering the various orders passed and more so the direction of the learned Judge dated

19th January, 2006 we are really ought not to have interfered with the letter. However, at the same time we are conscious that it is the petitioners who may suffer the consequences of the action of the respondent No.3. It is on these peculiar facts that we had asked the learned Counsel for the respondent No.3 to consider whether the proposal as now recorded and made by the petitioners could be considered. Learned Counsel for the respondent No.2 states that in so far as the petition is concerned the same will have to be dismissed. However, if the petitioners /Respondent No.3 within six weeks from today purchase the property identified under Nos.117/119 then it will be open to the petitioners to make an application for necessary relief which will be considered according to law. It is also pointed out that it is the normal practice of parties that after losing before the various forums to finally submit to the Court that they propose to buy FSI and load it on the structure.

5. Bearing in mind the need for the Respondent No.2 to maintain control over illegal constructions we agree with the learned Counsel for the Respondent No.2 that wrong doers should not be allowed to invoke the extra ordinary jurisdiction of this Court. However, as we have pointed out it is the petitioners who may suffer the consequences and considering that on the peculiar facts of the case we dispose of this petition with the following

directions:-

(1) Petition as filed stands dismissed.

(2) If the petitioners or respondent No.3 produce a sale deed of property identified under No.117/119 before the Respondent No.2 within six weeks from today as set out in the affidavit dated 27th April, 2006 the respondent No.2 not to take steps to demolish the construction, but permit the respondent No.3 to file an application for the reliefs of amalgamation/regularisation and the same be decided according to law.

(3) If the sale deed is not entered into and produced before the respondent No.2 within six weeks from today the respondent No.2 will be free to take action which they are entitled to in law.

(4) If the petitioners/respondent No.3 purchase the property as set out earlier and an application is moved the respondent No.2 not to take any steps for demolition of the structure till disposal of the said application.

(5) Writ Petition stands disposed of accordingly.

(F.I.REBELLO, J.)

(ANOOP V. MOHTA, J)